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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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DARBY & DARBY P.C.
805 Third Avenue
New York, NY 10022

EXAMINER

SMITH, KIMBERLY S

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 10/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/924,007

Applicant(s)

CRAWLEY ET AL.

Examiner

Kimberly S Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 17-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 17-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. The requirement for restriction dated 09/05/02 has been withdrawn from the record. The combination of the insect control member and vibration generator is now applicable for prosecution in the instant application.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3, 6, 7, 9, 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Nicosia et al., US Patent 6,088,949 (Nicosia).

Nicosia discloses an insect control member comprising a plastic substrate (142, column 11, line 61) having a thickness and flexural modulus (inherent in all materials) satisfying a predetermined criterion and to optimally radiate pressure waves at a prescribed frequency that mimics the heartbeat of an animal and an insect-interactive material supported on the substrate (column 11, line 61-62 in which it is stated the substrate is coated).

Regarding claims 2 and 3, the invention disclosed by Nicosia is comprised of a substrate having a thickness and a flexural modulus (as all materials inherently have). Given that a material with given properties was chosen for use with the invention and that the thickness and flexural modulus are inherent in a given material, it is therefore disclosed that the material was

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chosen based upon a prescribed criterion between a prescribed criterion between the thickness and the flexural modulus.

Regarding claim 6, Nicosia discloses a thickness that satisfies a prescribed criterion (i.e. deformability) that is defined by the material selected for the substrate.

Regarding claim 7, Nicosia discloses the substrate being a predetermined polymer wherein the predetermined polymer has a range of thickness that satisfy the prescribed criterion.

Regarding claim 9, Nicosia discloses the substrate including a front surface that defines a central insect-interactive zone and a peripheral sealing zone that surrounds the insect-interact zone (defined as the area within the clamp frame 160).

Regarding claim 12, Nicosia discloses the insect-interactive material is sticky (column 11, line 63)

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

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invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 4, 5, 8, 13, 14 and 17-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nicosia et al., US Patent 6,088,949 (Nicosia).

Nicosia discloses the invention as claimed including the substrate is comprised of a deformable material such as plastic. However, Nicosia does not positively disclose the use of polyethylene or a thickness of at least 0.5 mils. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use polyethylene as the plastic disclosed by Nicosia, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. It would have further been obvious to use a thickness of about 0.5 mils since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

Regarding claim 5, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use polyethylene, polypropylene, polyester, polycarbonate, PVC or polystyrene as the plastic disclosed by Nicosia, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Regarding claim 8, Nicosia discloses the invention substantially as claimed. However, Nelson does not disclose the polymer is an unfilled homopolymer. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use an unfilled homopolymer as the material disclosed by Nicosia, since it has been held to be within the general

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skill of a worker in the art to select a known material (reference Greenberg, US 4,202,129 for basis of a known material in the art) on the basis of its suitability for the intended use as a matter of obvious design choice.

Regarding claims 13 and 14, Nicosia discloses the invention substantially as claimed. However, Nicosia does not positively disclose the insect-interactive material comprises an oil-based composition or more particularly being a mineral oil. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use an oil based substance including mineral oil as the insect-interactive substance, since it has been held to be within the general skill of a worker in the art to select a known material (reference Stout US Patent 4,411,093 for the basis of a known insect-interactive material in the art) on the basis of its suitability for the intended use as a matter of obvious design choice.

Regarding claims 17-21, Nicosia discloses the invention substantially as claimed. However, Nicosia does not positively state that the thickness of the substrate is at least about 0.5 mils or has a range of material thickness bounded at the upper end to 10 mils. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a thickness of substrate of at least 0.5 mils and bounded at the upper end of a range to 10 mils, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

Regarding claims 22-31, Nicosia discloses the invention substantially as claimed. However, Nicosia does not positively state the prescribed frequency range. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the claimed frequency range since it has been held that where the general conditions of a claim are

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disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

7. Claims 10, 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nicosia as applied to claim 1 in view of Flashinski et al., US Patent 6,360,477 (Flashinski).

Nicosia discloses the invention as claimed including a central folding axis (as all objects have a central axis about which they may be folded), the substrate being foldable (as Nicosia discloses that the substrate is deformable and thereby capable of folding). However, Nicosia does not disclose that the substrate being folded in a stowed position. Flashinski teaches within the same field of endeavor that it is known in the art to fold a substrate upon itself in a stowed position so as to trap and maintain the active substance until the time the substrate is ready for use. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the teaching of Flashinski with the device of Nicosia in order to maintain the full strength of the insect interactive material of Nicosia until the substrate is used in operation. Flashinski further discloses the use of a sealing zone (36 and 38) in order to maintain the substrate in the folded position until use. It would have further been obvious to use the teaching of Flashinski's sealing zones in order to maintain the substrate in a stowed position and to maintain the strength of the insect interactive material until use.

8. Claims 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nobbs, US Patent 675,338 (submitted with applicants IDS).

Nobbs discloses a front surface having an insect interactive zone and a peripheral sealing zone, wherein the substrate is foldable, the insect-interactive material supported on the substrate within the interactive zone and a first and second fastener to maintain in the usable position

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(reference Figure 2). However, Nobbs does not disclose the substrate is plastic. It would have been obvious to one having ordinary skill in the art to use plastic as the substrate since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Allowable Subject Matter

9. With the withdrawal of the restriction requirement, it is felt that if the applicant were to include the limitation of the vibratory generator as presented initially in claim 16 with the insect control member limitation of claim 32, that this claim would receive favorable consideration. It is noted that upon such submission, a non-statutory double patenting rejection may be required for Nelson et al., US Patent 6,568,123 which would be overcome by a timely filed terminal disclaimer.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S Smith whose telephone number is 703-308-8515.

The examiner can normally be reached on Monday thru Friday 10:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 703-305-7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

kss

A handwritten signature in black ink, appearing to read 'Teri P. Luu', with a stylized flourish at the end.

TERI P. LUU
SUPERVISORY PRIMARY EXAMINER